Manitoba

Annual Report 1991

Office of the Commissioner
Law Enforcement Review Agency
Law Enforcement Review Board

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Minister of Justice

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Honour
The Honourable Dr. George Johnson
Lieutenant-Governor of Manitoba

Your Honour:

It is my pleasure to present the 1991 Annual Report of the Law Enforcement Review Agency. This report details the Commission's accomplishments and activities for the twelve-month period from January 1, 1991 to December 31, 1991.

I trust this meets with your approval.

Respectfully submitted,

Hon. Jim McCrae
Attorney-General for
the Province of Manitoba

Manitoba

Law Enforcement
Review Agency

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

The Honourable Jim McCrae
Attorney-General
Province of Manitoba

Dear Mr. Minister:

I am pleased to submit my report for the period January 1, 1991 to December 31, 1991 in accordance with Section 45 of **The Law Enforcement Review Act**.

Your sincerely,

Des DePourcq
Commissioner

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The L.E.R.A. Process

The purpose of **The Law Enforcement Review Act** is to provide a mechanism to receive, resolve and, if necessary, adjudicate citizen complaints concerning municipally employed peace officers. The nature of the complaints which fall within the purview of the legislation are those which concern breaches of a code of discipline which are specifically defined in Section 29 of the Act.

Frivolous Complaints

After receiving and establishing the nature of a complaint, the Act instructs the Commissioner to "decline to take further action" if satisfied that the nature of the complaint is frivolous or vexatious; or, not within the scope of the **Act**. When a complaint is rejected on these grounds, the complainant has the right to appeal the Commissioner's decision to the Manitoba Police Commission.

Time Limits

In addition to rejection for the previously stated reasons, Section 6(3) requires that complaints be received in writing within 30 days of the alleged disciplinary default. The Commissioner may extend this time limit up to six months where the complainant has no reasonable opportunity to meet the 30 day requirement. Where the complainant is the subject of a criminal charge, the Commissioner has the discretionary power to extend the time period for filing a complaint to a time not later than one year from the date of the offence or 30 days after the criminal charge has been dealt with, whichever is the soonest.

Resolution of Complaints

Following acceptance and investigation, a complaint is resolved in one of three ways — by informal resolution — by admission of a disciplinary default — by adjudication on the merits of the complaint by a Law Enforcement Review Board.

Respondent Officer

The respondent officer is not bound to make any statement to the Commissioner or to answer any question asked by the Commissioner or anyone employed by the Commissioner. The respondent officer is not compellable as a witness at any board hearing.

Informal Resolution

The Act requires the Commissioner first and foremost to attempt informal resolution through consultation with the complainant, the respondent and the respondent's Police Chief. For a complaint which is resolved informally, no penalty is imposed against the respondent officer and no record of the complaint is entered on the police officers' service record.

Formal Hearing

The third or last method available to the Commissioner for disposition of a complaint is referral to the Law Enforcement Review Board for hearing on the merits of the complaint. Board hearings operate under a standard of proof which requires the complaint to be proven "beyond a reasonable doubt".

Penalties

A respondent officer who admits to, or is found guilty by the commission of a disciplinary default, is subject to the imposition of one or more penalties outlined in Section 30 of the Act. The penalties range from an admonition to dismissal from the police department.

Composition of the Board

The Law Enforcement Review Board is comprised of no less than 7 persons appointed by the Lieutenant-Governor-in-Council. The presiding officer and deputy must be members of the Law Society with a minimum of five years' experience at the Bar. The Board must also include at least two persons who are or were peace officers. Three members constitute a quorum for hearings. No board member who is or has been a member of a police department shall sit on any hearing involving a complaint against a member of that police department.

Law Enforcement Review Agency and Board Establishment

The full time staff of L.E.R.A. consists of:

Des DePourcq, Commissioner

Tammy Fraser, Registrar and Secretary

The following personnel attached to the Law Enforcement Services Branch of the Justice Department provide investigative services to L.E.R.A. from time to time:

Del Hanson, Chief Investigator

Gerald E. Ferguson, Investigator

Neville D. Shende, Q.C. Deputy Director of Legal Services, Justice Department, acts as legal counsel to the Commissioner

The Law Enforcement Review Board included the following members in 1991:

Martha Chuchman, Presiding Officer

Charles Meighen, Deputy Presiding Officer

Ms. Chuchman and Mr. Meighen are lawyers in private practice in Winnipeg and Brandon.

Lay Members:

Paul Chartrand, Professor, University of Manitoba, Native Studies Department

Joan Upton, Homemaker

Minta Purvis, Retired Social Worker

Sonia Barbaza, Stewardess, Air Canada

Alex Arenson, Lawyer, Legal Aid, Province of Manitoba

Robert Fabbri, Lawyer in private practice in Winnipeg

Geoffrey Lambert, Professor, Political Studies, University of Manitoba

Bruce Chegus, Lawyer, Great West Life Assurance Co.

Trish Elwick, Writer

Val MacKenzie, Homemaker

Jan Henderson, University Student

Maxine Shamray, self-employed business proprietor

Bev Davis, Inservice Teacher, Health Sciences Centre

Peace Officers:

Allan Galbraith, Staff Sergeant, Winnipeg Police Dept.

Robert Rae, Sergeant, Brandon Police Dept.

Anton (Tony) Cherniak, Retired Superintendent, Winnipeg Police Department

George Clavelle, Retired Inspector, Winnipeg Police Department

Acknowledgements

I would be remiss if I did not acknowledge the cooperation and assistance received from the police. This applies to all police forces with which L.E.R.A. has been dealing. It is particularly true of the Winnipeg Police Department which accounts for over 95% of the L.E.R.A. workload. The cooperation of Chief Herb Stephen, the Deputy Chiefs and Senior Police Officers of the force has been of the highest calibre and is greatly appreciated. The assistance and cooperation from members of the Winnipeg Police Internal Investigation Unit has been helpful and gratifying.

The Winnipeg Police Association, through its officers and legal counsel, continue to assist L.E.R.A. by facilitating the attendance of respondent officers and witness officers for interviews.

The Brandon Police Department accounts for less than 5% of complaints received. Chief Brian Scott, the executive officers and rank and file members have been most helpful and cooperative with this Agency in providing every assistance to L.E.R.A. investigators in the processing of the complaints.

The excellent investigative services provided by Del Hanson and Gerry Ferguson of the Law Enforcement Services Branch is also gratefully acknowledged. The quality of their investigations has contributed to the overall success in resolving numerous complaints by informal resolution between complainants and respondent officers.

Overview

Annual Reports tend to be self-serving documents. Program managers are inclined to extoll the good points while downplaying the negative issues.

In preparing this report, I am reminded of a childhood poem — "The Walrus and the Carpenter". The poem begins:

The time has come the Walrus said
To talk of many things
Of shoes and ships and sealing wax
Of cabbages and kings

The time has come to stop and talk about the status of the Law Enforcement Review Agency as well as the direction it has been moving. L.E.R.A. was enacted into law in February, 1985. In the 1986 annual report, the Commissioner identified two areas of major concern, staffing and legislation. It was apparent then, there would be a need for extra staff, both clerical and investigative, as well as legislative changes if L.E.R.A. was to successfully achieve its purpose for which it was created.

In 1988, the Research, Planning and Evaluation Department of the Attorney General conducted a study rationalizing the mandate, program and resources of the Law Enforcement Review Agency, the Manitoba Police Commission and the Law Enforcement Services Branch. The report made a number of recommendations. Some of the recommended changes to the L.E.R.A. Act were in the area of legal representation, authority of the commissioner, provision for assessment of costs, as well as time limits for appeals. The report was not acted upon due to subsequent political events.

In April 1988 the Manitoba government created the Aboriginal Justice Inquiry. Its purpose was to inquire into and make findings about the state of conditions respecting Aboriginal people in the Justice System in Manitoba. The scope of the Inquiry was to include all components of the justice system, i.e. policing, courts, and correctional services. The report was released August 12, 1991.

Some of the recommendations made by the Aboriginal Justice Inquiry concerning L.E.R.A. are:

> The Law Enforcement Review Board be reconstituted and **The Law Enforcement Review Act** be amended to approximate the Ontario model.
>
> The board appoint independent counsel to have conduct of each case and be responsible for presenting the evidence.
>
> Where the complaint is from an Aboriginal person, at least one member of a panel be Aboriginal.
>
> The test to be applied by the board, be proof by clear and convincing evidence, rather than beyond a reasonable doubt.
>
> If the board decides that the complaint is

proven, it have full power to impose whatever penalties it deems appropriate.

Police officers, including the officer against whom the complaint is made, be compellable witnesses.

Any consideration for changes to the Agency were shelved until after the release of the Aboriginal Justice Inquiry report.

The time is past due for changes to L.E.R.A. Since assuming the position of Commissioner in 1988, it is apparent the complaint process does not satisfy the complainant or the respondent police officer. If L.E.R.A. continues in its present form, serious consideration must be given to the following issues: complainants be provided counsel at board hearings; the standard of proof be changed; a panel of mediators be available to mediate disputes; withdraw the pre-determination of a penalty for the respondent officer prior to a hearing; expand the powers of the Commissioner to deal with complaints which are frivolous, vexatious, or unsubstantiated, impose time limits for appeals, increase staffing, and increase the mandate to include criminal investigations.

L.E.R.A. in its present form is unique to Manitoba. Even though the Aboriginal Justice Inquiry recommends we adopt the Ontario model, there are many and varied civilian review agencies throughout Canada and the world from which we can adopt all or part of those models when considering changes.

I believe we have come to a fork in the road and must decide if L.E.R.A. will remain as is or move off in a new direction.

Workload

For 1991, staffing and funding levels remained unchanged. The Commissioner interviewed all complainants, respondents and witness officers with the exception of a small number of complaints originating outside of Winnipeg and at the Manitoba Youth Centre. Investigators from the Law Enforcement Branch, Justice Department were responsible for locating and interviewing civilian witnesses and, in some cases, conducted follow-up interviews with complainants. Winnipeg Police officers were interviewed in the presence of their legal counsel.

As in previous years, the three most frequent complaints received are:

Use of oppressive or abusive conduct or language;

Unnecessary violence or excessive force;

Being discourteous or uncivil;

Oppressive or abusive conduct complaints continue to drop from the high of 77 in 1987 to 21 in 1991.

Unnecessary violence or excessive force complaints dropped from 49 (1990) to 27 (1991), a continual decline from the high of 63 in 1987.

Discourteous or uncivil behavior complaints continue a downward trend on a regular basis from the high of 29 in 1986 to 1 in 1991.

Section 35 of **The Law Enforcement Review Act** requires a complaint be referred to the Justice Minister for criminal investigation and the possible laying of charges where it is revealed a police officer may have committed a criminal offence. In 1991, nineteen complaints of alleged assault were referred for criminal investigation, a noticeable increase from seven referrals in 1990. The increase is due to a more vigorous application of the Act. It does not indicate an outbreak of violence in the police community.

In 1991, a total of 189 citizen complaints were received, a decrease of 8 from the 197 complaints received in 1990. Sixty-nine complaints were accepted for investigation. The remaining 120 were rejected for reasons of non-jurisdiction, not within the scope of the Act or time expired.

A total of 69 files were opened during the year. In addition, 40 files were carried over from 1990 for a total of 109 current active files. Seventy-eight files were closed leaving 31 files carried forward to 1992.

Nineteen files were referred for criminal investigation. Eleven files were returned in which criminal charges were not authorized. One complainant withdrew his complaint prior to the file being referred to the Justice Department for a decision. At this time, no disposition has been reached on the remaining seven files.

Of the 12 files dealt with, two complainants alleged they were assaulted at a police station after being arrested as suspects in thefts from parked vehicles.

Police responded to a house call concerning a dispute at a party where it was reported a firearm was involved. The complainant alleged he was assaulted by arresting officers during the physical act of arresting him.

A motorist involved in a motor vehicle accident left the scene without exchanging particulars. He drove home and retired for the night. He alleged the investigating officer had unlawfully entered his house, assaulted him when he was forcefully ejected from his house, arrested, and taken to a police station for questioning.

A complaint was received from a male adult who reported he and his friend spent most of the day drinking in a hotel beverage room. He objected when police removed his friend from the premises. He obstructed the police with the result he was arrested. He alleged he was assaulted by police when conveyed to the police station.

A male adult alleged he was assaulted by a police officer when checked for a traffic violation while riding his bicycle. He alleged he was assaulted when placed in the cruiser car prior to being driven to the police station.

Police officers attended at the residence of a juvenile to arrest him on a warrant for Unlawfully at Large. He fled from the house and alleged he was assaulted by one of the arresting officers when apprehended after a short foot chase.

A motorist was involved in a motor vehicle accident with a police cruiser car. He alleged he was assaulted by the police at the scene of the accident.

One complainant alleged he was assaulted in his home when police attended at his residence to arrest him as a suspect in a robbery offence.

A juvenile complainant alleged he was assaulted by investigating officers when he voluntarily attended at a police station to be questioned in regards to a break and enter offence.

Law Enforcement Review Board

During the year, eight complaints were scheduled to be heard by the Law Enforcement Review Board for a hearing on the merits of the complaint. Two board hearings were cancelled prior to the hearing date. One complainant withdrew his complaint while the second complainant resolved the matter informally.

On two occasions, the Board convened but no ruling was made as one complainant resolved the matter immediately prior to the hearing and the other complainant withdrew her complaint before the commencement of the hearing.

The L.E.R.A. Board heard evidence and rendered decisions on four complaints.

(1) The complainant alleged an officer abused his authority by using his status as a police officer when he attended at the complainant's residence to speak to him in regards to a civil debt. The complainant presented his own case to the Board whereas the officer was represented by counsel. The Board dismissed the complaint stating the complainant had not met the standard of proof required.

(2) The complainant while driving his car was attempting to make a turn at an intersection. In doing so, he became embroiled in an argument with an off-duty officer operating his private vehicle. During the course of the heated discussion, the officer produced identification, identifying himself as a police officer. The complainant drove away without resolving the issue. The following morning the officer, while on duty and in uniform, attended at the complainant's office where he served the complainant with four offence notices in the presence of other employees. The complainant alleged the officer abused his authority by being oppressive and abusive in his conduct and language as well as seeking improper personal advantage in his dealings with the complainant. The complainant represented himself at the hearing while the officer was represented by counsel. The board ruled the complainant had not met the standard of proof required in presenting his case and dismissed the complaint.

(3) The complainant, while operating his vehicle, was checked by a cruiser car because of his manner of driving. A computer check performed at the scene indicated the complainant had an outstanding warrant for Breach of Probation. The complainant advised the officers this was a mistake since the matter had been dealt with. He alleged he was assaulted by the officers when resisting their attempts to place him under arrest. The matter could not be resolved by informal resolution. The Law Enforcement Review Board was convened for a two-day hearing. Both the complainant and respondent officers were represented by counsel. At the commencement of the hearing, counsel for the officers argued successfully the board did not have jurisdiction to hear the matter since the complainant had filed his complaint after the allowable time limit. The board concurred and dismissed the complaint.

(4) The complainant was at a house party when police officers responded to a call of a fight in progress with beer bottles involved. The complainant had obtained possession of a shot gun with the result there was a confrontation between the officers and the complainant when arresting him. The complainant alleged the officers used unnecessary violence or excessive force, used oppressive or abusive conduct or language and was discourteous or uncivil towards him during the course of his arrest. He also alleged one officer was present and failed to assist the complainant in circumstances where there was a clear danger to the complainant's safety. The complainant did not attend the Law Enforcement Review Board hearing. However, he was represented by counsel who submitted the complaint in his absence. At the conclusion of the hearing, the Board dismissed the allegations.

Table 1

Totals for the Year

	1991	1990	1989
Number of Citizens' representations received	189	197	167
Non-jurisdiction, not within scope of the Act, time expired	120	111	77
Complaints accepted for investigation	69	86	90
Origin			
Brandon	2	6	5
Winnipeg	66	77	81
Other	1	3	4
Files Closed — Disposition			
No further action subsection 13(1)	5	11	26
Withdrawn by Complainant	22	29	35
Admission by respondent officer	0	0	0
Informal Resolution	13	3	13
Referred to a L.E.R.A. Board hearing on the merits	10	6	10
Total	50	49	84
Files open at December 31	31	40	43
Other Activity			
Referred for criminal investigation	19	7	1

Table 2

Type of Allegations

	1991	1990
Using oppressive or abusive conduct or language	21	25
Using unnecessary violence or excessive force	27	49
Being discourteous or uncivil	1	4
Discrimination	2	0
Arrest without reasonable or probable grounds	1	1
Failing to provide assistance	0	1
Making a false statement	0	0
Violating the privacy of any person with the meaning of The Privacy Act	0	1
Failing to use restraint in the use and care of firearms	0	0
Improperly disclosing any information acquired as a member of the police department	0	0
Contravening this Act or any regulation under this Act except where the Act or regulation provides a separate penalty for the contravention	0	0
Damaging property or failing to report the damage	0	1
Abuse of Authority	17	4
Totals	69	86

Table 3
Board Referrals and Hearings

	1991	1990	1989
Carried forward from last year	2	2	4
Referrals	10	6	10
Hearings	4	3	6
Withdrawn	2	3	2
Carried forward to next year	4	2	2
Informally resolved at or before the hearing	2	0	4

Table 4
Location of Incident

	1991	1990
Street	29	41
Private Home	23	18
Public Building/Place or Police Station	15	22
Police vehicle	2	5
Other (unknown)	0	0
Total	69	86

Table 5
Legal Involvement of Complainant

	1991	1990	1989
No charges	28	32	34
Traffic violation	13	22	15
Property offences	0	6	6
Intoxicated Person's Detention Act	5	0	2
Causing disturbance	4	0	3
Assault peace officer/resist arrest	5	7	9
Impaired driving	3	2	6
Offences against another person	2	0	1
Other	9	17	14
Total	69	86	901

Table 6
Complaints Closed in 1991
(Includes files carried over from previous years)

No. of Months to Resolution	
3 and under	21
4 to 8 months	22
9 to 12 months	15
over 12 months	17
Total	75

Manitoba

The Law Enforcement Review Act **Form 1**

COMPLAINT

DATE and TIME REPORTED

Day	Month	Year	Time

Nº

COMPLAINANT

Surname	First Name	Initial(s)	Date of Birth	Sex	Marital Status

Home Address	Postal Code	Telephone No. — Residence	Business Address	Postal Code	Telephone No. — Business

Date of Incident	Time	Location

DETAILS OF INCIDENT (must be typewritten or printed)

Use reverse side if more space required

Details of Injuries Sustained	Photographs Taken NO ☐ YES ☐

Attending Physician Name	Address	Telephone No.	Hospital Attended	Date Attended

WITNESS(ES) Name	Address	Telephone No.

Affected Person (if different than complainant) Name	Address	Telephone No.

OFFICER(S) INVOLVED Name and Rank	Number	Form 2 given to complainant ☐ Yes ☐ No	If no, state reason:

COMPLAINT RECEIVED BY:	I CERTIFY THAT THE INFORMATION I HAVE GIVEN HEREIN IS TRUE. Signature of Complainant

DISTRIBUTION: **Quadruplicate**
L.E.R.A. Commissioner (white)
Complainant (canary)
Police Chief (pink)
Respondent Officer (goldenrod)

MG-12259

OVER

Manitoba

Attorney General

Law Enforcement
Review Agency

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

Complaint Procedures

TO THE COMPLAINANT:

This statement sets out the procedures that will be followed in dealing with your complaint and your rights under **The Law Enforcement Review Act.**

Who May Make a Complaint:

1. Any person who feels aggrieved by the action or attitude of a police officer may make a complaint.
2. A complaint may also be made by another person on behalf of the person affected by the incident complained about. This would most often be the case if the affected person has died, is a minor or is temporarily or permanently incapacitated from acting on his or her own behalf. Unless the affected person is under 18 year of age or is not competent to give consent, the complaint will only be proceeded with the affected person consents in writing.

How to Make Your Complaint:

3. Your initial complaint may be made verbally or in writing to any member or the chief of the police department involved or directly to the office of the Law Enforcement Review Agency (L.E.R.A.) Commissioner at the 12th Floor, 405 Broadway Avenue (Woodsworth Building), Winnipeg, Manitoba R3C 3L6, telephone 945-8667.
4. You will be asked to complete a complaint form (Form 1). You may request the assistance of the Commissioner's office or of a member of the police department to assist you in completing this form. Before it can be dealt with by the Commissioner, a complaint must be submitted in writing and signed by the complainant.

   Note: If a complaint against an R.C.M.P. officer is made to the Commissioner, it will be forwarded to the R.C.M.P. Public Complaints Commission. Procedures under **The Law Enforcement Review Act** do not apply to such complaints. They are dealt with under **The R.C.M.P. Act.**

Time Limits:

5. Ordinarily complaints must be submitted within 30 days of the incident leading to the complaint. Under special circumstances, where the complainant has no reasonable opportunity to meet this deadline, the Commissioner may extend the time, but to not more than six months from the date of the incident. Such special circumstances might include the complainant's absence in some remote location or out of the province or sickness or injury.
6. Where a complainant faces criminal charges connected with the incident which leads to the complaint, the Commissioner may extend the time limit to not more than 30 days after the final disposition of the charges or one year from the date of the incident, whichever is the sooner.

Who Sees Your Complaint:

7. No matter where your complaint is recorded, a copy will be sent to the L.E.R.A. Commissioner and the chief of police of the police department concerned. The police officer complained against will also receive a copy as soon as is practicable.

Investigation and Reports:

8. An investigator from the Commissioner's office may interview you, the police officer concerned and any other persons who can provide relevant information on your complaint.
9. If you prefer to have your complaint dealt with by an internal investigation by the police force concerned, you may make a written request to this effect to the Commissioner who may then decide to suspend his own investigation. He will however receive a report of the internal investigation.

Appeal to Police Commission:

10. On reviewing the results of the investigations, the Commissioner may decide that the complaint was not justified, or that the matter complained of does not constitute a disciplinary default as defined in the Act. In that case you will be informed that no further action will be taken. If you are not satisfied with the reasons for this decision, you may apply to the Manitoba Police Commission to review the matter.

11. The Commission may sustain the decision of the Commissioner or order that the complaint be proceeded with. The Commission's ruling is final.

Informal Resolution of Complaint:

12. After the Commissioner has reviewed the circumstances of the complaint, he will consult with you to determine whether the complaint can be resolved informally. An important purpose of **The Law Enforcement Review Act** is to maintain harmony and cooperation between police and the community. Very often this purpose is best served by mutual explanations and reconciliations.

13. Both you and the police officer concerned must agree on the way in which the complaint is to be resolved, otherwise an informal resolution cannot take place.

14. As an alternative to informal resolution, the police officer may admit to a disciplinary default and accept a penalty prescribed by the Commissioner.

Law Enforcement Review Board:

15. The Board established under the Act holds a hearing to review the complaint under the following circumstances:

    (i) Where the Manitoba Police Commission, on application of the complainant, has overruled the decision of the Commissioner not to take further action (see item 11).

    (ii) Where the police officer complained against does not admit to being at fault.

16. You will be notified at least 14 days in advance of the date set by the Board for its hearing.

17. You may present your own case before the Board or you may be represented by counsel.

18. Board hearings are public except where the Board decides that they should be held in private in the interests of justice.

19. All testimony at a Board hearing is made under oath.

20. The Board is required to dismiss a complaint that cannot be proven beyond a reasonable doubt. You will be informed of the Board's decision as soon as practicable after the hearing, and if you request it, the reasons for the Board's decision.

Appeal:

21. You may appeal a decision of the Board to the Court of Queen's Bench but only on a question of the Board's jurisdiction or a question of law.

Legal Counsel:

22. You may be represented by counsel at any stage of the proceedings, including hearings by the Commissioner or the Board.

23. A Legal Aid lawyer may be provided to complainants who are financially eligible for Legal Aid. In special cases, the Commissioner may recommend provision of legal counsel at public expense where a complainant is not eligible for Legal Aid but the cost of a lawyer would represent a substantial financial hardship.

Reports:

24. During the course of processing your complaint, you will receive progress reports if proceedings take longer than 30 days and you will be informed of the final disposition of your complaint.

Further Questions:

25. If you require additional information or explanations, please apply to the Commissioner, Law Enforcement Review Agency (L.E.R.A.), 12 Floor, 405 Broadway Avenue, Winnipeg, Manitoba R3C 3L6, or telephone 945-8667, Toll Free: 1-800-282-8069.

Appendix II

The Law Enforcement Review Act and Regulations

CHAPTER L75

THE LAW ENFORCEMENT REVIEW ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

"board" means the Law Enforcement Review Board continued under this Act; ("Bureau")

"Chief of Police" means the executive head of a municipal police department by whatever rank or title he may be designated, and includes any member acting as the executive head of a municipal police department; ("chef de police")

"Commissioner" means the Commissioner appointed under this Act; ("commissaire")

"complainant" means a person who has filed a complaint under this Act; ("plaignant")

"complaint" means a complaint made by a person in respect of a disciplinary default allegedly committed by a member of a police department; ("plainte")

"disciplinary default" means any act or omission referred to in section 29; ("faute disciplinaire")

"member" or "member of a police department" means any person employed in a municipal police department having the powers of a peace officer or employed as a peace officer in any municipality in the Province of Manitoba; ("membre" ou "membre d'un service de police")

CHAPITRE L75

LOI SUR LES ENQUÊTES RELATIVES À L'APPLICATION DE LA LOI

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

"Bureau" Le Bureau d'enquête sur l'application de la loi, prorogé conformément à la présente loi. ("board")

"chef de police" Le directeur administratif d'un service de police municipal, ou tout membre qui en fait fonction, quel que soit son grade ou son titre. ("Chief of police")

"commissaire" Le commissaire nommé en application de la présente loi. ("Commissionner")

"défendeur" Membre contre qui une plainte a été formulée dans le cadre de la présente loi. ("respondent")

"dossier" Dossier disciplinaire tenu en application de l'article 32. ("service record")

"faute disciplinaire" Tout acte ou toute omission figurant à l'article 29. ("disciplinary default")

"membre" ou "membre d'un service de police" Tout employé d'un service de police municipal qui a les pouvoirs d'un agent de la paix, ou qui est à l'emploi d'une municipalité du Manitoba comme agent de la paix. ("member" or "member of a police department")

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; ("ministre")

"respondent" means a member against whom a complaint has been made under this Act; ("défendeur")

"service record" means a service record established under section 32. ("dossier")

"ministre" Le membre du Conseil exécutif chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. (" minister")

"plaignant" Personne qui a déposé une plainte dans le cadre de la présente loi. ("complainant")

"plainte" Plainte formulée par une personne alléguant qu'un membre d'un service de police a commis une faute disciplinaire. ("complaint")

Appointment of Commissioner.
2(1) The Lieutenant Governor in Council shall appoint a Commissioner.

Powers, duties and functions.
2(2) The Commissioner has such powers and shall carry out such duties and functions as conferred or imposed under this Act or as may be required for purposes of this Act by the Lieutenant Governor in Council.

Full-time appointment.
2(3) The Commissioner shall devote his full time to his responsibilities under this Act, and shall not concurrently hold any full-time or part-time position of any kind.

Commissioner is officer of Manitoba Police Commission.
3 The Commissioner is an officer of the Manitoba Police Commission.

Board continued.
4(1) The "Law Enforcement Review Board" comprised of not less than seven persons, including a presiding officer and deputy presiding officer, appointed by the Lieutenant Governor in Council, is continued.

Powers, duties and functions.
4(2) The board has such powers and shall carry out such duties and functions as conferred or imposed under this Act or as may be required for purposes of this Act by the Lieutenant Governor in Council.

Nomination du commissaire
2(1) Le lieutenant-gouverneur en conseil nomme un commissaire.

Pouvoirs et fonctions
2(2) Le commissaire a les pouvoirs et s'acquitte des fonctions que lui attribue la présente loi, outre ceux que peut lui assigner le lieutenant-gouverneur en conseil pour les fins de l'application de la présente loi.

Emploi à plein temps
2(3) Le commissaire doit consacrer tout son temps aux fonctions que lui attribue la présente loi et n'occuper aucun autre poste à plein temps ou à temps partiel.

Commissaire préposé de la Commission de police
3 Le commissaire est un préposé de la Commission de police du Manitoba.

Prorogation du Bureau
4(1) Est prorogé le Bureau d'enquête sur l'application de la loi, composé d'au moins sept personnes, y compris le président et le vice-président, nommées par le lieutenant-gouverneur en conseil.

Pouvoirs et fonctions
4(2) Le Bureau a les pouvoirs et s'acquitte des fonctions que la présente loi lui attribue, outre ceux que peut lui assigner le lieutenant-gouverneur en conseil aux fins de l'application de la présente loi.

Presiding officers to be lawyers.
4(3) No person shall be appointed presiding officer or deputy presiding officer of the board unless he is a member in good standing of the Law Society of Manitoba with at least five years' experience at the Bar.

Board to include peace officers.
4(4) The membership of the board shall at all times include at least two persons who are or were peace officers.

Quorum.
4(5) Three board members constitute a quorum for purposes of conducting board business.

Panel chosen on sequential basis.
4(6) On or before April 1 of every year, the presiding officer of the board shall prepare a list naming all the members of the board, and for purposes of holding hearings or conducting other board business, the members shall serve in sequence as their names appear on the list; but if by reason of subsection 24(2) a board member is ineligible to sit on a hearing, the next member in sequence shall be selected to sit on the hearing.

Assistance of experts.
5 The minister may authorize the Commissioner at the expense of the government to retain the services of counsel and other experts as the Commissioner deems fit.

Complaint concerning police conduct.
6(1) Every person who feels aggrieved by a disciplinary default allegedly committed by any member of a police department may file a complaint under this Act.

Third party complaint.
6(2) The complaint may be filed notwithstanding that the alleged disciplinary default has affected some person other than the complainant, but has not affected the complainant.

Procedure for filing complaint.
6(3) Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint, and shall be submitted to

Avocats à la présidence et à la vice-présidence
4(3) Nul ne peut être nommé à la présidence ou à la vice-présidence du Bureau, à moins d'être membre attitré de la Société du Barreau du Manitoba et de posséder au moins cinq années d'expérience comme avocat.

Agents de la paix membres du Bureau
4(4) Au moins deux des personnes qui composent le Bureau doivent être ou avoir déjà été des agents de la paix.

Quorum
4(5) Trois membres du Bureau constituent le quorum nécessaire pour ses délibérations.

Ordre de succession des membres du Bureau
4(6) Au plus tard le 1er avril de chaque année, le président du Bureau prépare une liste énumérant les noms de tous les membres de celui-ci. Les membres du Bureau tiennent des audiences et vaquent aux autres affaires de celui-ci les uns après les autres selon l'ordre d'apparition de leur nom sur la liste préparée par le président. Lorsque, en vertu du paragraphe 24(2), un membre du Bureau ne peut siéger à une audience, le membre dont le nom suit sur la liste préparée par le président siège à l'audience.

Emploi d'experts
5 Le ministre peut autoriser le commissaire, lorsque ce dernier le juge approprié, à retenir les services d'avocats et autres experts aux frais du gouvernement.

Plainte sur la conduite d'un policier
6(1) Toute personne qui se croit lésée par suite d'une faute disciplinaire commise par un membre d'un service de police peut déposer une plainte en vertu de la présente loi.

Plainte formulée au nom d'un tiers
6(2) La plainte est recevable lors même que la faute disciplinaire reprochée n'aurait pas porté préjudice au plaignant personnellement mais à une autre personne.

Procédure de dépôt d'une plainte
6(3) Le plaignant doit formuler sa plainte par écrit, y énumérer les chefs de plainte, la signer et la soumettre à l'une ou l'autre des personnes suivantes dans les 30 jours de la date de la faute disciplinaire reprochée :

(a) the Commissioner; or
(b) the Chief of Police of the department involved in the complaint; or
(c) any member of the department involved in the complaint;
not later than 30 days after the date of the alleged disciplinary default.

a) le commissaire;
b) le chef de police du service concerné;
c) tout membre du service concerné.

Verbal complaint.
6(4) Every member who receives a verbal complaint concerning conduct which may constitute a disciplinary default shall forthwith inform the person making the verbal complaint that a complaint under this Act must be made in writing and shall forthwith inform the person of the relevant time limits set out in this section.

Plainte verbale
6(4) Lorsqu'un membre reçoit une plainte verbale au sujet d'une conduite qui pourrait constituer une faute disciplinaire, le membre doit immédiatement informer le plaignant qu'une plainte, afin d'être reçue en vertu de la présente loi, doit être formulée par écrit. Le membre doit également immédiatement informer le plaignant des délais applicables prévus au présent article.

Where complainant unable to write.
6(5) Where the complainant is unable to reduce the complaint into writing, the person to whom the complaint is made shall
(a) take down the complaint in writing;
(b) read the complaint back to the complainant; and
(c) have the complainant sign the complaint.

Plaignant incapable d'écrire
6(5) Lorsque le plaignant est incapable de formuler sa plainte par écrit, la personne à qui la plainte est présentée doit :
a) formuler elle-même la plainte par écrit;
b) en faire la lecture au plaignant;
c) la faire signer au plaignant.

Commissioner may extend time.
6(6) Where the complainant has no reasonable opportunity to file a complaint within the time period set out in subsection (3), the Commissioner may extend the time for filing the complaint to a date not later than six months after the date of the alleged disciplinary default.

Prorogation du délai par le commissaire
6(6) Lorsque le plaignant n'a pas pu, pour des motifs raisonnables, déposer sa plainte avant l'expiration du délai accordé pour ce faire au paragraphe (3), le commissaire peut permettre que la plainte soit déposée au maximum six mois après la date de la faute disciplinaire reprochée.

Where complainant faces criminal charges.
6(7) Where an alleged disciplinary default occurs in the course of an investigation, arrest or other action by a member which results in a criminal charge against the complainant, the Commissioner may extend the time for filing the complaint to a date not later than one year after the date of the alleged disciplinary default or 30 days after the final disposition of the criminal charge, whichever is the sooner.

Plaignant accusé d'une infraction criminelle
6(7) Lorsqu'une personne est accusée d'une infraction criminelle suite à une enquête, une arrestation ou une autre action effectuée par un membre, au cours de laquelle celui-ci aurait commis une faute disciplinaire, le commissaire peut permettre qu'une plainte soit déposée par cette personne au maximum un an après la date de la faute disciplinaire reprochée ou 30 jours après le jugement définitif relatif à cette accusation, selon le premier de ces événements à se produire.

Notification of complaint.
7(1) Where a complaint is made
(a) to the Commissioner, the Commissioner shall forthwith forward a copy of the complaint to the Chief of Police of the department involved in the complaint;

Avis de plainte
7(1) Lorsqu'une plainte est présentée :
a) au commissaire, le commissaire en transmet immédiatement une copie au chef de police du service concerné;

(b) to a member of the department involved in the complaint, the member shall forthwith forward a copy of the complaint to the Chief of Police of that department who shall forward a copy to the Commissioner;

(c) to the Chief of Police of the department involved in the complaint, the Chief of Police shall forthwith forward a copy of the complaint to the Commissioner;

together with any other statements or documents submitted by the complainant.

Copy of complaint to respondent.

7(2) Upon receiving a complaint, the Commissioner shall, as soon as it is practicable, provide the respondent with a copy of the complaint.

No complaint by member.

8 Notwithstanding section 6, no member shall file a complaint under this Act in respect of any act or omission which affects the member while he is executing his duties.

Commissioner to notify affected person.

9(1) Where a complaint has been filed in the circumstances referred to in subsection 6(2), the Commissioner, forthwith after receiving the complaint, shall in writing notify the person affected by the alleged disciplinary default that a complaint has been filed under this Act.

Affected person must consent.

9(2) Where the person affected by the alleged disciplinary default does not, within 14 days of receiving the notification referred to in subsection (1) or within such further time as the Commissioner may allow, file with the Commissioner a written consent to the processing of the complaint under this Act, the Commissioner shall take no further action on the complaint.

Where no consent required.

9(3) Subsection (2) does not apply where the person affected by the alleged disciplinary default is an infant or is not competent to give consent.

b) à un membre du service concerné, le membre en transmet immédiatement une copie au chef de police de ce service, lequel en transmet immédiatement une copie au commissaire;

c) au chef de police du service concerné, le chef de police en transmet immédiatement une copie au commissaire,

et la copie de la plainte doit être accompagnée des autres déclarations et documents soumis par le plaignant.

Copie de la plainte au défendeur

7(2) Lorsqu'il reçoit une plainte, le commissaire doit, aussitôt que possible, en procurer une copie au défendeur.

Interdiction aux membres de déposer une plainte

8 Malgré les dispositions de l'article 6, nul membre n'est admis à déposer une plainte en vertu de la présente loi lorsqu'il se croit lésé par un acte ou une omission qui lui aurait porté préjudice alors qu'il exerçait ses fonctions.

Avis transmis par le commissaire

9(1) Dès le dépôt d'une plainte dans les circonstances prévues au paragraphe 6(2), le commissaire doit en aviser par écrit la personne à laquelle la faute disciplinaire reprochée a porté préjudice.

Consentement de la personne subissant le préjudice

9(2) Lorsque la personne à laquelle la faute disciplinaire reprochée a porté préjudice omet de déposer par écrit auprès du commissaire, dans les 14 jours de la réception de l'avis prévu au paragraphe (1) ou à l'intérieur de tout délai supplémentaire qu'accorde le commissaire, son consentement à ce que la plainte soit étudiée selon les dispositions de la présente loi, le commissaire classe l'affaire.

Exceptions à la nécessité du consentement

9(3) Le paragraphe (2) ne s'applique pas lorsque la personne à laquelle la faute disciplinaire reprochée a porté préjudice est mineure ou inhabile à donner son consentement.

Further particulars.
10 On his own behalf or at the request of the respondent, the Commissioner may require the complainant to provide further particulars of the conduct complained of and the Commissioner shall forward a copy of the further particulars to the respondent and to the respondent's Chief of Police.

Complaint against Chief of Police.
11(1) Any person wishing to make a complaint against a Chief of Police shall file the complaint with the Commissioner and this Act, except subsection 12(8), applies with necessary modifications thereto.

No complaint in disciplinary matter.
11(2) Notwithstanding subsection (1), no member shall file a complaint under this Act in respect of the exercise by the Chief of Police of his power to discipline any member.

Investigation by Commissioner.
12(1) Upon receiving a complaint, the Commissioner shall forthwith cause the complaint to be investigated and for this purpose, the Commissioner has all the powers of Commissioners under Part V of The Manitoba Evidence Act.

Relevant materials forwarded to Commissioner.
12(2) At the request of the Commissioner, the Chief of Police of the department involved in the complaint shall forthwith forward to the Commissioner copies of all documents, statements, and other materials relevant to the complaint which are in the possession, or under the control, of the police department involved in the complaint.

Materials required for criminal investigation.
12(3) Where any of the materials referred to in subsection (2) are required for the purpose of a criminal investigation, the Chief of Police may request, and the Commissioner may grant, an extension of time for forwarding copies of such materials.

Précisions supplémentaires
10 De son propre chef ou à la demande du défendeur, le commissaire peut demander au plaignant de fournir des précisions supplémentaires sur la conduite dont celui-ci se plaint, et, lorsqu'il les reçoit, il doit en transmettre une copie au défendeur et au chef de police du défendeur.

Plainte contre un chef de police
11(1) Toute plainte portée contre un chef de police doit être soumise au commissaire, et la présente loi, sauf le paragraphe 12(8), s'y applique avec les modifications nécessaires.

Plainte irrecevable
11(2) Malgré les dispositions du paragraphe (1), nul membre ne peut déposer une plainte en vertu de la présente loi relativement à l'exercice, par le chef de police, de son pouvoir disciplinaire sur un membre.

Enquête par le commissaire
12(1) Lorsqu'il reçoit une plainte, le commissaire fait immédiatement tenir une enquête, et à cette fin il a tous les pouvoirs d'un commissaire d'enquête nommé en application de la partie V de la Loi sur la preuve au Manitoba.

Transmission des documents
12(2) À la demande du commissaire, le chef de police du service concerné doit immédiatement lui transmettre copie de l'ensemble des documents et déclarations se rapportant à la plainte qui sont en la possession ou sous la garde de ce service.

Documents requis aux fins d'une enquête criminelle
12(3) Lorsque certains des documents mentionnés au paragraphe (2) sont requis aux fins d'une enquête criminelle, le chef de police peut demander un délai supplémentaire au commissaire pour transmettre copie de ces documents, lequel délai ce dernier peut accorder.

Questions of privilege.
12(4) Where the Chief of Police declines to forward copies of any of the materials referred to in subsection (2) on the ground that the materials are privileged, the Commissioner may make summary application to a judge of the Court of Queen's Bench for a ruling on the question of privilege.

Order to search and seize.
12(5) Where a justice is satisfied by information upon oath of the Commissioner, or a person employed by the Commissioner, that there is reasonable ground to believe that there is in a building, receptacle or place

(a) anything upon or in respect of which a disciplinary default under this Act has been or is suspected to have been committed; or

(b) anything which there is reasonable ground to believe will afford evidence of the commission of a disciplinary default under this Act;

the justice may issue a warrant authorizing a person named therein or the Commissioner to search the building, receptacle or place for any such thing, and to seize the thing and bring it before the Commissioner for use by the Commissioner in investigating a complaint under this Act.

Utilizing necessary resources and persons.
12(6) Subject to subsection (7), the Commissioner may utilize any resources and employ any persons the Commissioner deems necessary for the prompt and thorough investigation of a complaint.

No investigation by department involved in complaint.
12(7) Except as otherwise provided in this section, the Commissioner shall not employ for purposes of investigation any person who is, or at the time of the occurrence complained of was, a member of the police department involved in the complaint.

Document privilégié
12(4) Lorsque le chef de police refuse de transmettre copie d'un document quelconque mentionné au paragraphe (2), pour le motif qu'il serait privilégié, le commissaire peut demander à un juge de la Cour du Banc de la Reine, selon la procédure sommaire, de décider s'il s'agit ou non d'un document privilégié.

Mandat de perquisition et saisie
12(5) Lorsqu'un juge de paix conclut, après que le commissaire ou que l'un de ses employés l'ait déclaré dans une dénonciation faite sous serment, qu'il existe des motifs raisonnables de croire qu'il se trouve dans un bâtiment, un réceptacle ou un endroit :

a) soit une chose à l'égard de laquelle ou en rapport avec laquelle une faute disciplinaire prévue à la présente loi a été ou est soupçonnée avoir été commise;

b) soit une chose au sujet de laquelle il existe des motifs raisonnables de croire qu'elle contribuera à établir la preuve de la commission d'une faute disciplinaire prévue à la présente loi,

le juge peut décerner un mandat autorisant une personne qui y est nommée ou le commissaire à perquisitionner le bâtiment, le réceptacle ou l'endroit dans le but de trouver cette chose ainsi qu'à la saisir et à l'apporter au commissaire afin que celui-ci puisse s'en servir dans le cadre de toute enquête relative à une plainte déposée en vertu de la présente loi.

Moyens et personnes nécessaires
12(6) Sous réserve du paragraphe (7), le commissaire peut prendre tout moyen et employer toute personne qu'il estime nécessaires pour mener une enquête rapide et approfondie sur une plainte.

Nulle enquête par le service concerné
12(7) Sauf disposition contraire dans le présent article, le commissaire ne peut employer, aux fins d'une enquête, aucune personne qui est membre du service de police concerné, ou qui l'était lors de l'événement faisant l'objet de la plainte.

Internal investigation.
12(8) At the written request of the complainant, the Commissioner may refer the complaint to the respondent's Chief of Police for internal investigation.

Criminal investigation.
12(9) Where the respondent's Chief of Police informs the Commissioner that the respondent's conduct is being or will be investigated by the internal investigation unit of the department for the possible laying of criminal charges against the respondent, the Commissioner may request the Chief of Police to forward the results of the investigation to the Commissioner for purposes of this Act.

Report by Chief of Police.
12(10) When the internal investigation referred to in subsection (8) or (9) has been completed, the Chief of Police shall report the results of the investigation to the Commissioner, and the Commissioner shall thereafter deal with the complaint as provided in this Act.

Commissioner not to act on certain complaints.
13(1) Where the Commissioner is satisfied that the subject matter of the complaint

(a) is frivolous or vexatious; or

(b) does not fall within the scope of section 29;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his reasons for declining to take further action.

Application to Manitoba Police Commission.
13(2) Where under subsection (1) the Commissioner has declined to take further action on the complaint, the complainant may apply to the Manitoba Police Commission for an order requiring the Commissioner to refer the complaint to the board for a hearing.

Police commission to hear parties.
13(3) At the request of either party, the Manitoba Police Commission shall hear submissions from the parties in support of or in opposition to an application brought under subsection (2).

Enquête intérieure
12(8) À la demande écrite du plaignant, le commissaire peut déférer la plainte au chef de police du défendeur pour enquête intérieure.

Enquête criminelle
12(9) Lorsque le chef de police du défendeur informe le commissaire que la conduite du défendeur fait ou fera l'objet d'une enquête de la section d'enquête intérieure du service afin de déterminer si le défendeur sera inculpé d'infractions criminelles, le commissaire peut demander au chef de police de lui faire parvenir, aux fins de la présente loi, les conclusions de l'enquête.

Rapport du chef de police
12(10) Lorsque l'enquête intérieure visée au paragraphe (8) ou (9) est terminée, le chef de police soumet un rapport des conclusions de celle-ci au commissaire, lequel s'occupe alors de la plainte comme le prévoit la présente loi.

Plainte classée par le commissaire
13(1) Lorsque le commissaire conclut que l'objet de la plainte :

a) est futile ou vexatoire;

b) n'est pas prévu par l'article 29,

le commissaire classe l'affaire et transmet par écrit les motifs de cette décision au plaignant, au défendeur et au chef de police du défendeur.

Appel à la Commission de police du Manitoba
13(2) Lorsque le commissaire a classé l'affaire en application du paragraphe (1), le plaignant peut demander à la Commission de police du Manitoba d'ordonner au commissaire de déférer la plainte au Bureau pour audience.

Audience par la Commission de police
13(3) À la demande d'une des parties, la Commission de police du Manitoba doit entendre les représentations des parties à l'appui ou à l'encontre d'une demande présentée en vertu du paragraphe (2).

Burden of proof on complainant.
13(4) Where an application is brought under subsection (2), the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

Decision of Manitoba Police Commission final.
13(5) The decision of the Manitoba Police Commission on an application under subsection (2) is final and shall not be subject to appeal or review of any kind.

Evidence of internal disciplinary matter.
14 Where under subsection 9(2) or section 13 the Commissioner takes no further action on a complaint, but the investigation has revealed evidence of matters which may be subject to internal police discipline, the Commissioner may forward all relevant material to the appropriate disciplinary authority in the police department for the possible commencement of internal disciplinary procedures.

Informal resolution of complaint.
15(1) Where the investigation has been completed, the Commissioner shall consult with the complainant, the respondent and the respondent's Chief of Police for the purpose of resolving the complaint informally.

Agreement between complainant and respondent.
15(2) Where the complainant and the respondent concur, but the respondent's Chief of Police does not concur, with a proposal to resolve the complaint informally, the Commissioner may nevertheless resolve the complaint informally in accordance with the proposal.

No record of informal resolution.
15(3) Where the complaint is resolved informally, no penalty shall be imposed against the respondent and no record of either the complaint or the informal resolution thereof shall be entered on the service record of the respondent.

Fardeau de la preuve
13(4) Lorsqu'une demande est présentée en vertu du paragraphe (2), le plaignant doit prouver que le commissaire a erré en décidant de classer l'affaire.

Décision finale de la Commission de police
13(5) La décision de la Commission de police du Manitoba, quant à une demande faite en vertu du paragraphe (2), est finale et ne peut faire l'objet d'appel ou de révision d'aucune sorte.

Matière à mesure disciplinaire intérieure
14 Lorsque le commissaire a classé l'affaire en vertu du paragraphe 9(2) ou de l'article 13, mais que l'enquête a laissé croire qu'il pourrait y avoir matière à mesure disciplinaire intérieure, le commissaire peut transmettre toute la documentation pertinente à l'autorité disciplinaire du service de police concerné, pour les fins d'éventuelles procédures disciplinaires intérieures.

Règlement sans formalités de la plainte
15(1) Lorsque l'enquête est terminée, le commissaire doit consulter le plaignant, le défendeur et le chef de police de ce dernier, pour tenter de régler l'affaire sans formalités.

Accord entre le plaignant et le défendeur
15(2) Lorsque le plaignant et le défendeur souscrivent à une proposition quant à la façon de régler l'affaire sans formalités, le commissaire peut la régler conformément à cette proposition, même si le chef de police du défendeur n'y souscrit pas.

Aucune mention au dossier
15(3) Lorsque l'affaire est réglée sans formalités, aucune peine n'est appliquée au défendeur et il n'est fait mention ni de la plainte ni de son règlement dans le dossier du défendeur.

Admission of disciplinary default.
16(1) Where the respondent admits having committed a disciplinary default, the Commissioner shall recommend one or more of the penalties set out in section 30.

Appropriate penalty determined.
16(2) Before recommending one or more of the penalties set out in section 30, the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent.

Matters relevant to appropriate penalty.
16(3) The purpose of the Commissioner's consultation with the respondent's Chief of Police shall be to determine the opinion of the Chief of Police with respect to

(a) the severity of the alleged disciplinary default; and

(b) the contents of the respondent's service record;

and the Commissioner's recommendation concerning an appropriate penalty shall be based solely upon these two factors.

Imposition of penalty.
16(4) If the respondent concurs with the recommendation of the Commissioner, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

Referral to board.
16(5) If the respondent does not concur with the recommendation of the Commissioner, the Commissioner shall refer the complaint to the board for a hearing on the question of the penalty to be imposed against the respondent.

Statement of facts and recommended penalty.
16(6) Where the Commissioner refers a complaint to the board under subsection (5), the Commissioner shall prepare and forward to the board a written statement of

(a) the facts which constitute the subject matter of the complaint; and

(b) the penalty or penalties recommended by the Commissioner under subsection (1);

and the Commissioner shall provide the respondent with a copy of the statement.

Aveu de faute disciplinaire
16(1) Lorsque le défendeur avoue avoir commis une faute disciplinaire, le commissaire recommande l'application d'une ou de plusieurs des peines énumérées à l'article 30.

Décision quant à la peine appropriée
16(2) Avant de recommander l'application d'une ou de plusieurs des peines énumérées à l'article 30, le commissaire doit consulter le chef de police du défendeur et étudier le dossier du défendeur.

Consultation du chef de police
16(3) Le commissaire ne consulte le chef de police du défendeur que pour connaître son opinion relativement à :

a) la gravité de la faute disciplinaire reprochée;

b) le contenu du dossier du défendeur.

La recommandation du commissaire quant à la peine appropriée ne doit être fondée que sur ces deux considérations.

Application de la peine
16(4) Si le défendeur souscrit à la recommandation du commissaire, son chef de police lui applique la peine recommandée. Si le défendeur est lui-même chef de police, son employeur lui applique la peine recommandée.

Renvoi au Bureau
16(5) Si le défendeur ne souscrit pas à la recommandation du commissaire, ce dernier doit déférer l'affaire au Bureau pour audience relativement à la peine qui devrait être appliquée.

Document relatif aux faits et à la peine recommandée
16(6) Lorsque le commissaire défère l'affaire au Bureau en application du paragraphe (5), il rédige et transmet au Bureau un document, dont il fournit une copie au défendeur, qui énonce :

a) les faits ayant donné lieu à la plainte;

b) la peine ou les peines qu'il a recommandées en vertu du paragraphe (1).

Referral to board on merits.
17(1) Where

(a) the Manitoba Police Commission has ordered the Commissioner to refer a complaint to the board for a hearing; or

(b) disposition of a complaint within the terms of section 15 or section 16 is not possible;

the Commissioner shall refer the complaint to the board for a hearing on the merits of the complaint.

Notice of alleged disciplinary default.
17(2) Where the Commissioner refers a complaint to the board under subsection (1), the Commissioner shall serve the respondent with notice of each alleged disciplinary default in the form prescribed by the regulations, and the Commissioner shall forward a copy of the notice of each alleged disciplinary default to the board.

Statement recommending appropriate penalty.
17(3) Upon referring a complaint to the board under subsection (1), the Commissioner shall prepare a written statement recommending one or more of the penalties set out in section 30 to be the penalty which in the Commissioner's opinion the board should impose for each alleged disciplinary default, and the Commissioner shall provide the respondent with a copy of the statement.

Forwarding of statement to board.
17(4) The Commissioner shall not forward the statement referred to in subsection (3) to the board unless, subsequent to determining the merits of the complaint, the board requests the statement for the purposes of clause 28(2)(b).

Appropriate penalty determined.
17(5) Before preparing the statement referred to in subsection (3), the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent; and subsection 16(3) applies to the consultation and to the Commissioner's recommendation.

Renvoi au Bureau
17(1) Le commissaire doit déférer l'affaire au Bureau pour audience sur le fond lorsque, selon le cas :

a) la Commission de police du Manitoba a ordonné au commissaire de déférer la plainte au Bureau pour audience;

b) le règlement de la plainte conformément aux articles 15 ou 16 est impossible.

Avis au défendeur et au Bureau
17(2) Lorsque le commissaire défère une affaire au Bureau en application du paragraphe (1), le commissaire doit signifier au défendeur un avis de chaque faute disciplinaire reprochée, sous la forme prescrite par les règlements, et en transmettre une copie au Bureau.

Recommandation de la peine appropriée
17(3) Lorsque le commissaire défère une plainte au Bureau en vertu du paragraphe (1), il rédige un document dans lequel il recommande les peines parmi celles prévues à l'article 30 qu'à son avis le Bureau devrait imposer relativement à chaque faute disciplinaire reprochée. Le commissaire fournit au défendeur une copie dudit document.

Transmission du document au Bureau
17(4) Le commissaire ne transmet au Bureau le document mentionné au paragraphe (3) que si, après avoir rendu sa décision sur le fond de la plainte, le Bureau demande qu'on lui fournisse le document pour les fins de l'alinéa 28(2)b).

Décision relative à la peine maximale appropriée
17(5) Avant de rédiger le document mentionné au paragraphe (3), le commissaire doit consulter le chef de police du défendeur et étudier le dossier du défendeur, et dans ce cas le paragraphe 16(3) s'applique.

Recommendation by Manitoba Police Commission.
17(6) Where the Manitoba Police Commission has ordered the Commissioner to refer a complaint to the board for a hearing, the Manitoba Police Commission shall determine an appropriate penalty for each alleged disciplinary default in accordance with the procedures set out in this section, and the Commissioner shall observe the requirements of subsection (3) as if the Commissioner had determined the appropriate penalty.

Access to documents and statements.
18(1) Subject to subsection (2), all parties to a board hearing and their counsel, but no other persons, are entitled to examine any relevant documents or statements in the possession, or under the control, of the Commissioner.

Questions of privilege.
18(2) Where the Commissioner believes that a question of privilege arises in respect of any documents or statements in his possession or under his control, he may make summary application to a judge of the Court of Queen's Bench for a ruling on the question of privilege.

Respondent entitled to remain silent.
19 The respondent is not bound to make any statement to the Commissioner, or to answer any question asked by the Commissioner or anyone employed by the Commissioner.

Respondent's statements inadmissible.
20(1) No statement made by the respondent to the Commissioner or to anyone employed by the Commissioner, except a statement made for purposes of section 16, is admissible at any hearing of the board without the consent of the respondent.

Statement for purposes of resolution privileged.
20(2) Any statement made by either the complainant or the respondent for purposes of resolving the complaint under section 15 is privileged for all purposes, including an action arising out of the same facts as the complaint.

Recommandation de la Commission de police
17(6) Lorsque la Commission de police du Manitoba a ordonné au commissaire de déférer l'affaire au Bureau pour audience, la Commission de police décide, en respectant les procédures prévues au présent article, d'une peine appropriée pour chaque faute disciplinaire reprochée. Le commissaire doit ensuite se conformer aux dispositions du paragraphe (3), comme s'il avait lui-même pris cette décision.

Accès aux documents
18(1) Seules les parties à une audition du Bureau et leurs avocats ont le droit, sous réserve du paragraphe (2), de consulter tout document ou toute déclaration se rapportant à la plainte et se trouvant en la possession ou sous la garde du commissaire.

Documents privilégiés
18(2) Lorsque le commissaire est d'avis qu'un document ou une déclaration quelconque qui est en sa possession ou sous sa garde soulève une question de privilège, il peut, selon la procédure sommaire, demander à un juge de la Cour du Banc de la Reine de décider s'il s'agit ou non d'une déclaration ou d'un document privilégié.

Droit du défendeur de garder le silence
19 Le défendeur n'est tenu de faire aucune déclaration au commissaire, ou de répondre à aucune question de celui-ci ou de ses employés.

Déclarations du défendeur irrecevables
20(1) Une déclaration faite par le défendeur, au commissaire ou à l'un de ses employés, ne constitue une preuve recevable à l'audience tenue par le Bureau que si le défendeur y consent, sauf s'il s'agit d'une déclaration prévue à l'article 16.

Déclarations privilégiées
20(2) Toute déclaration faite par le plaignant ou le défendeur, lors du règlement de la plainte conformément à l'article 15, est privilégiée à toutes fins que de droit et notamment quant à une action fondée sur les mêmes faits que la plainte.

Right to counsel.
21 Both the complainant and the respondent have a right to counsel at any stage of any proceedings under this Act, including review by the Commissioner.

Contributing causes.
22 Where the Commissioner identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the Commissioner may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.

Fixing and notification of date of hearing.
23(1) Where the Commissioner has referred a complaint to the board under this Act, the board shall fix a date, time, and place for a hearing and shall notify

(a) the complainant;
(b) the respondent;
(c) the respondent's Chief of Police; and
(d) the Commissioner;

of the date, time, and place at least 14 days prior to the hearing.

Parties to hearing.
23(2) The complainant and the respondent are parties to any board hearing, but the board may add such other parties, and may receive submissions from such other persons, as it sees fit.

Who presides at hearing.
24(1) The presiding officer or deputy presiding officer shall preside at every board hearing.

Member of same department not to sit on hearing.
24(2) No board member who is or has been a member of a police department shall sit on any hearing involving a complaint against a member of that police department.

Droit à un avocat
21 Le plaignant et le défendeur ont le droit d'être représentés par avocat à toute étape de toute procédure prévue par la présente loi, notamment au cours de l'enquête par le commissaire.

Causes contribuantes
22 Lorsque le commissaire découvre qu'une pratique quelconque d'un service de police, relative à son organisation ou à son administration, peut avoir causé la faute disciplinaire alléguée ou y avoir contribué, le commissaire peut recommander les changements appropriés au chef de police et aux autorités municipales régissant ce service.

Établissement et avis de la date d'audience
23(1) Lorsque le commissaire a déféré une plainte au Bureau en application de la présente loi, le Bureau doit fixer la date et l'heure de l'audience ainsi que l'endroit où elle se tiendra, et en aviser les personnes suivantes au plus tard 14 jours avant la tenue de l'audience :

a) le plaignant;
b) le défendeur;
c) le chef de police du défendeur;
d) le commissaire.

Parties à l'audience
23(2) Les parties à l'audience du Bureau sont le plaignant et le défendeur. Le Bureau peut aussi désigner d'autres parties ou prendre connaissance des représentations d'autres personnes lorsqu'il le juge approprié.

Présidence de l'audience
24(1) Chaque audience tenue par le Bureau est présidée par le président ou le vice-président du Bureau.

Interdiction de siéger à un membre du même service
24(2) Nul membre du Bureau ne peut siéger à une audience lorsqu'il est ou a été membre du même service de police que le défendeur.

Powers of board under Evidence Act.
24(3) For the purpose of holding a hearing under this Act, the board has all the powers of Commissioners under Part V of The Manitoba Evidence Act.

Summary conviction procedures to apply.
24(4) Except as otherwise provided in this Act or by regulation, the rules of procedure in summary conviction proceedings apply to all board hearings.

Evidence.
24(5) The board may receive and accept such evidence and information on oath, affirmation, affidavit, or otherwise as in its discretion it may deem fit and proper, whether admissible in evidence in a court of law or not; and the evidence and information shall be recorded.

Right to participate.
24(6) At every board hearing, the parties may be present, may call witnesses, may cross-examine witnesses in respect of viva voce or affidavit evidence, and may be represented by counsel.

Presentation of case in support of complaint.
24(7) The case in support of the complaint may be presented by
(a) the complainant; or
(b) counsel retained by the complainant; or
(c) where the complainant applies and is financially eligible for legal aid, counsel appointed by The Legal Aid Services Society of Manitoba.

Where complainant ineligible for legal aid.
24(8) Where the complainant applies but is financially ineligible for legal aid, the Commissioner shall review the complainant's finances, and where the Commissioner believes

Pouvoirs du Bureau régis par la Loi sur la preuve
24(3) Aux fins de la tenue d'une audience en application de la présente loi, le Bureau a tous les pouvoirs d'un commissaire d'enquête nommé en application de la partie V de la Loi sur la preuve au Manitoba.

Application de la procédure des poursuites sommaires
24(4) Sauf disposition contraire de la présente loi ou des règlements, les règles de procédure qui régissent les poursuites sommaires s'appliquent à toutes les auditions du Bureau.

Témoignages
24(5) Le Bureau peut recevoir et admettre tout témoignage ou tout renseignement, qu'il soit recevable en preuve ou non dans une cour de justice, et que ce soit sous forme de déclaration sous serment, d'affirmation solennelle, d'affidavit ou autrement, à sa discrétion et selon ce qu'il juge approprié. Le témoignage ou le renseignement doit être enregistré ou consigné.

Droit de participation à l'audience
24(6) Les parties ont le droit d'assister à toute audience tenue par le Bureau, d'y appeler des témoins, d'y contre-interroger des témoins relativement à des témoignages de vive voix ou par affidavit, et d'y être représentées par avocat.

Présentation des preuves à l'appui de la plainte
24(7) Les preuves à l'appui de la plainte peuvent être présentées par l'une ou l'autre des personnes suivantes :
a) le plaignant;
b) un avocat dont le plaignant a retenu les services;
c) un avocat nommé par la Société d'aide juridique du Manitoba, lorsque le plaignant en fait la demande et y a droit en raison de sa situation financière.

Aide juridique refusée
24(8) Lorsque le plaignant a demandé l'aide juridique mais qu'on lui a refusée en raison de sa situation financière, le commissaire doit étudier la situation financière du plaignant, et s'il estime que

that the complainant cannot afford to retain counsel, the Commissioner may recommend that the minister appoint counsel to present the case in support of the complaint; and the minister may appoint counsel for that purpose.

Hearing in absence of respondent.
24(9) Where the respondent absconds or refuses or neglects without good and sufficient cause to attend the hearing, the board may hold the hearing in the respondent's absence.

Respondent not compellable.
24(10) The respondent is not compellable as a witness at any board hearing.

Public hearing.
24(11) Every board hearing shall be public, unless the maintenance of order or the proper administration of justice requires that all or part of a hearing be held in-camera; and the board may order that all or part of a hearing be held in-camera.

Justifying in-camera hearing.
24(12) Where any party applies to have all or part of a hearing held in-camera, the onus shall be on that party to satisfy the board that the maintenance of order or the proper administration of justice requires an in-camera hearing.

Ban on publication.
25 Notwithstanding that all or part of a board hearing is public, no person shall cause to be published in any newspaper or other periodical publication, or broadcast on radio or television, the name of the respondent until the board has determined the merits of the complaint or the respondent admits having committed a disciplinary default.

Admission of disciplinary default.
26 At the commencement or during the course of a board hearing, the respondent may admit having committed a disciplinary default; and if the respondent admits the default, the provisions of section 28 apply.

le plaignant ne peut se permettre d'engager un avocat pour le représenter, il peut recommander au ministre, qui a discrétion pour ce faire, de fournir un avocat au plaignant pour les fins de la plainte.

Audience en l'absence du défendeur
24(9) Lorsque le défendeur s'enfuit, ou refuse ou omet d'assister à l'audience sans motif valable et suffisant, le Bureau peut procéder à l'audience en l'absence du défendeur.

Défendeur non contraignable
24(10) Le défendeur ne peut être contraint à témoigner lors d'une audience tenue par le Bureau.

Audience publique
24(11) Toute audience tenue par le Bureau est publique, sauf si le maintien de l'ordre ou la bonne administration de la justice commande le huis clos. Le Bureau peut alors ordonner que l'audience ou une partie quelconque de l'audience soit tenue à huis clos.

Justification du huis clos
24(12) Lorsqu'une des parties demande le huis clos pour la tenue de l'audience ou d'une partie de celle-ci, il lui appartient de convaincre le Bureau que le maintien de l'ordre ou la bonne administration de la justice commande le huis clos.

Interdiction de publication
25 Malgré qu'une audience du Bureau soit publique en tout ou en partie, nul ne doit agir de façon à ce que soit publié dans un journal ou autre périodique ou à ce que soit diffusé à la radio ou à la télévision le nom du défendeur, jusqu'à ce que le Bureau ait rendu sa décision sur le fond de la plainte ou que le défendeur ait avoué avoir commis une faute disciplinaire.

Aveu de faute disciplinaire
26 Dès le début d'une audience tenue par le Bureau ou en tout temps au cours de celle-ci, le défendeur peut avouer avoir commis une faute disciplinaire, auquel cas l'article 28 s'applique.

Decision by board.
27(1) As soon as practicable after the conclusion of the hearing, the board shall decide whether the respondent has committed a disciplinary default and the board shall deliver its decision in writing

(a) to the parties; and

(b) where the respondent's Chief of Police and the Commissioner are not parties, to the respondent's Chief of Police and the Commissioner.

Standard of proof.
27(2) The board shall dismiss a complaint in respect of an alleged disciplinary default unless the board is satisfied beyond a reasonable doubt that the respondent has committed the disciplinary default.

Reasons for decision.
27(3) At the request of any party or the minister, the board shall provide to the parties and, where requested, to the minister, written reasons for

(a) the board's decision on the merits of a complaint; or

(b) a penalty ordered by the board under section 28.

Ordering of penalty.
28(1) Where the respondent admits having committed or is found to have committed a disciplinary default, the board shall hear the submissions of the parties and details of the service record of the respondent; and the board shall order one or more of the penalties set out in section 30 for each disciplinary default which the respondent has committed.

Review of Commissioner's recommendation.
28(2) Prior to ordering a penalty against the respondent, the board shall

(a) in the case of a complaint referred to the board under subsection 16(5), examine the written statement forwarded by the Commissioner under subsection 16(6); and

(b) in the case of a complaint referred to the board under subsection 17(1), receive from the Commissioner and examine the written statement prepared by the Commissioner under subsection 17(3).

Décision du Bureau
27(1) Dès que possible après la tenue de l'audience, le Bureau décide si le défendeur a commis une faute disciplinaire et transmet sa décision par écrit :

a) aux parties;

b) au chef de police du défendeur et au commissaire lorsqu'ils n'étaient pas parties à l'audience.

Degré de preuve requis
27(2) Le Bureau doit rejeter la plainte à moins qu'il ne soit convaincu, hors de tout doute raisonnable, que le défendeur a commis la faute disciplinaire.

Motifs de décision
27(3) À la demande d'une des parties ou du ministre, le Bureau doit transmettre par écrit aux parties, et au ministre lorsque requis, les motifs :

a) de sa décision au fond relativement à la plainte;

b) de sa décision relativement à la peine, prévue à l'article 28.

Peine ordonnée
28(1) Lorsque le défendeur avoue avoir commis une faute disciplinaire ou est déclaré coupable d'une telle faute, le Bureau entend les représentations des parties, examine le dossier du défendeur, et ordonne l'application au défendeur d'une ou de plusieurs des peines énumérées à l'article 30 pour chacune des fautes disciplinaires qu'il a commises.

Étude de la recommandation du commissaire
28(2) Avant d'ordonner l'application d'une peine au défendeur, le Bureau doit :

a) dans le cas d'une plainte déférée au Bureau en vertu du paragraphe 16(5), examiner le document écrit transmis par le commissaire en vertu du paragraphe 16(6);

b) dans le cas d'une plainte déférée au Bureau en vertu du paragraphe 17(1), recevoir du commissaire le document rédigé par ce dernier en vertu du paragraphe 17(3) et examiner ce document.

Maximum penalty.
28(3) For each disciplinary default which the respondent has committed, the board may order the penalty recommended by the Commissioner, or, in its discretion, a lesser penalty.

Compliance with order of board.
28(4) Where the board has ordered a penalty against the respondent, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

Discipline Code.
29 A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

(a) abuse of authority, including
(i) making an arrest without reasonable or probable grounds,
(ii) using unnecessary violence or excessive force,
(iii) using oppressive or abusive conduct or language,
(iv) being discourteous or uncivil,
(v) seeking improper pecuniary or personal advantage,
(vi) without authorization, serving or executing documents in a civil process, and
(vii) discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief, or ethnic or national origin;
(b) making a false statement, or destroying, concealing, or altering any official document or record;
(c) improperly disclosing any information acquired as a member of the police department;
(d) failing to exercise discretion or restraint in the use and care of firearms;
(e) damaging property or failing to report the damage;

Peine maximale
28(3) Pour chaque faute disciplinaire que le défendeur a commise, le Bureau peut imposer la peine recommandée par le commissaire ou, à sa discrétion, une peine moindre.

Application de la peine
28(4) Lorsque le Bureau a ordonné l'application d'une peine au défendeur, le chef de police du défendeur doit l'appliquer; mais lorsque le défendeur est un chef de police, l'employeur de celui-ci doit l'appliquer.

Code de discipline
29 Un membre commet une faute disciplinaire lorsqu'il porte préjudice au plaignant ou à toute autre personne par un ou plusieurs des actes ou omissions qui suivent, survenant dans l'exécution de ses fonctions ou en découlant :

a) commettre un abus de pouvoir, notamment :
(i) procéder à une arrestation sans motif raisonnable ou probable,
(ii) faire usage de violence gratuite ou de force excessive,
(iii) se conduire ou s'exprimer de façon oppressive ou grossière,
(iv) être discourtois ou impoli,
(v) rechercher malhonnêtement un avantage pécuniaire ou personnel,
(vi) sans autorisation, signifier des documents ou mettre à exécution des ordonnances dans le cadre d'une procédure civile,
(vii) exercer de la discrimination envers une personne en raison de sa race, sa nationalité, sa religion, sa couleur, son sexe, son état matrimonial, sa déficience physique ou mentale, son âge, sa source de revenu, sa situation familiale, ses convictions politiques, ou son origine ethnique ou nationale;
b) faire une fausse déclaration, ou détruire, dissimuler ou altérer tout document ou registre officiel;
c) divulguer irrégulièrement tout renseignement obtenu en qualité de membre du service;
d) manquer de prudence ou de précaution dans l'usage ou le soin d'armes à feu;
e) causer ou omettre de rapporter des dommages à la propriété;

(f) being present and failing to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property;
(g) violating the privacy of any person within the meaning of The Privacy Act;
(h) contravening this Act or any regulation under this Act, except where the Act or regulation provides a separate penalty for the contravention;
(i) assisting any person in committing a disciplinary default, or counselling or procuring another person to commit a disciplinary default.

Penalties.
30 A member who admits having committed or is found to have committed a disciplinary default is liable to one or more of the following penalties set out in diminishing order of seriousness:
(a) dismissal;
(b) permission to resign, and in default of resignation within seven days, summary dismissal;
(c) reduction in rank;
(d) suspension without pay up to a maximum of 30 days;
(e) forfeiture of pay up to a maximum of 10 days' pay;
(f) forfeiture of leave or days off not to exceed 10 days;
(g) a written reprimand;
(h) a verbal reprimand;
(i) an admonition.

Appeal.
31(1) An appeal from a decision of the board lies to the Court of Queen's Bench upon any question involving the jurisdiction of the board or upon any question of law alone.

Time for filing.
31(2) The appellant shall file a notice of appeal in writing within 30 days after the decision of the board, unless the court in the exercise of its discretion grants an extension of time for the appeal.

f) être témoin d'événements qui mettent en péril la sécurité d'une personne ou de ses biens et omettre de lui porter secours;
g) porter atteinte à la vie privée d'une personne au sens de la Loi sur la protection de la vie privée;
h) contrevenir à la présente loi ou à tout règlement pris en application de la présente loi, sauf lorsque la Loi ou le règlement prévoit expressément la peine applicable pour une telle infraction;
i) aider toute personne à commettre une faute disciplinaire, lui conseiller de le faire ou l'y inciter.

Peines
30 Un membre qui admet avoir commis une faute disciplinaire, ou qui en est reconnu coupable, est passible d'une ou de plusieurs des peines suivantes énumérées par ordre décroissant d'importance :
a) renvoi;
b) permission de démissionner et, à défaut de le faire dans les sept jours, renvoi sommaire;
c) rétrogradation;
d) suspension sans salaire, pour une période maximale de 30 jours;
e) perte de salaire pour une période maximale de 10 jours;
f) perte d'au plus 10 jours de vacances ou de congé;
g) réprimande écrite;
h) réprimande verbale;
i) avertissement.

Appel
31(1) Il peut être interjeté appel d'une décision du Bureau à la Cour du Banc de la Reine, sur toute question relative à la compétence du Bureau ou sur toute question de droit uniquement.

Délai d'appel
31(2) L'appelant doit déposer un avis d'appel écrit dans les 30 jours de la décision du Bureau, à moins que la Cour, à sa discrétion, ne proroge ce délai.

Parties to appeal.
31(3) An appeal may be launched by the complainant or the respondent; and the complainant and the respondent are parties to the appeal.

Other parties.
31(4) Upon application, the Commissioner or the board, or both, may be joined as parties to the appeal.

Counsel for appeal.
31(5) At the written request of the Commissioner, the minister may appoint counsel to represent the complainant on the appeal.

Service record.
32(1) The Chief of Police of every police department in Manitoba shall keep a service record in respect of each member of the police department.

Contents of service record.
32(2) The Chief of Police shall record on the service record all matters relevant to the professional conduct of the member, including

(a) all disciplinary defaults under this Act and the penalties imposed therefor;

(b) all internal disciplinary offences and the penalties imposed therefor; and

(c) all official commendations given to the member;

but not including any personal matters which are not relevant to the professional conduct of the member.

Commencement of service record.
32(3) For purposes of this Act, each member shall be deemed to have a blank service record as of the coming into force of this Act; and each member's service record shall relate only to the professional conduct of the member subsequent to the coming into force of this Act.

No record of admonition.
32(4) Notwithstanding anything in this Act, where no penalty other than an admonition is imposed against a member for a disciplinary default under this Act, the member's Chief of Police shall not record the disciplinary default or the admonition on the member's service record.

Parties à l'appel
31(3) L'appel peut être interjeté par le plaignant ou par le défendeur, et tous deux sont parties à cet appel.

Autres parties
31(4) Le commissaire et le Bureau, ou l'un d'eux seulement, peuvent devenir parties à l'appel en en faisant la demande.

Avocat pour l'appel
31(5) À la demande écrite du commissaire, le ministre peut donner à un avocat le mandat de représenter le plaignant lors de l'appel.

Dossier disciplinaire
32(1) Le chef de police de chaque service de police au Manitoba doit tenir un dossier disciplinaire pour chacun des membres de son service.

Contenu du dossier
32(2) Le chef de police inscrit au dossier tout ce qui concerne la conduite du membre dans l'exercice de ses fonctions, notamment :

a) toute faute disciplinaire au sens de la présente loi, ainsi que la peine appliquée en conséquence;

b) toute contravention aux règles de discipline particulières au service, ainsi que la peine appliquée en conséquence;

c) les félicitations officiellement faites au membre,

sans égard à toute affaire personnelle qui ne concerne pas la conduite du membre dans l'exercice de ses fonctions.

Entrée en vigueur du dossier
32(3) Aux fins de la présente loi, le dossier de chaque membre est réputé être vierge lors de l'entrée en vigueur de ladite loi. Le dossier ne porte que sur la conduite du membre après l'entrée en vigueur de la présente loi.

Avertissement
32(4) Malgré toute autre disposition de la présente loi, lorsqu'un avertissement est la seule peine appliquée au membre pour une faute disciplinaire au sens de la présente loi, le chef de police du membre ne mentionne au dossier de ce dernier ni la faute disciplinaire ni l'avertissement.

Expunging service record.
32(5) Upon application by a member whose service record contains an entry for a disciplinary default under this Act, the member's Chief of Police shall expunge the entry

(a) where a reprimand was imposed, after two years have expired from the date of disciplining;

(b) where a forfeiture of pay, leave, or days off was imposed, after three years have expired from the date of disciplining; or

(c) where reduction in rank or suspension without pay was imposed, after five years have expired from the date of disciplining;

but only if in each case the member has committed no further disciplinary defaults under this Act since the date of disciplining.

Right to inspect service record.
32(6) Every member has the right to inspect his service record.

Organizational and administrative practices.
33 Where the board identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the board may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.

Effect of criminal charge.
34 Where a member has been charged with a criminal offence, there shall be no investigation, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.

Suppression d'une inscription
32(5) À la demande d'un membre qui a dans son dossier une inscription relative à une faute disciplinaire au sens de la présente loi, le chef de police du membre doit supprimer cette inscription :

a) lorsque deux ans ou plus se sont écoulés depuis l'application de la peine, dans le cas où il s'agissait d'une réprimande;

b) lorsque trois ans ou plus se sont écoulés depuis l'application de la peine, dans le cas où il s'agissait d'une perte de salaire ou d'une perte de vacances ou de congé;

c) lorsque cinq ans ou plus se sont écoulés depuis l'application de la peine, dans le cas où il s'agissait d'une rétrogradation ou d'une suspension sans salaire.

Toutefois, la suppression d'une inscription au dossier ne peut s'effectuer que si le membre n'a pas commis, depuis l'application de la peine, d'autres fautes disciplinaires prévues à la présente loi.

Consultation du dossier
32(6) Chacun des membres a le droit de consulter son dossier.

Pratiques administratives
33 Lorsque le Bureau découvre qu'une pratique quelconque d'un service de police, relative à son organisation ou à son administration, peut avoir causé la faute disciplinaire alléguée ou y avoir contribué, le Bureau peut recommander les changements appropriés au chef de police et aux autorités municipales régissant ce service.

Effet d'un acte d'accusation
34 Lorsqu'un membre est inculpé d'une infraction criminelle, il ne doit y avoir ni enquête ni audience ni mesure disciplinaire dans le cadre de la présente loi relativement à la conduite du membre qui constitue le chef d'accusation, à moins que l'instance commencée à l'égard de ce chef d'accusation ne soit suspendue ou qu'aucune décision sur le fond concernant cette instance ne soit rendue.

Disclosure of possible criminal offence.
35(1) Where a matter before the Commissioner or the board discloses evidence that a member may have committed a criminal offence, the Commissioner or board shall report the possible criminal offence to the Attorney-General and shall forward all relevant material, except privileged material, to the Attorney-General for the possible laying of charges.

Effect of decision to lay charges.
35(2) If the Attorney-General charges the member with a criminal offence, there shall be no further investigation, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.

Objection conclusively deemed.
35(3) Where a member who testifies before the board is subsequently charged with a criminal offence, the member shall be conclusively deemed to have objected to answering every question put to him before the board on the ground that his statement or his answer may tend to criminate him or to establish his liability to a legal proceeding at the instance of the Crown or of any person.

Prosecution for offences.
36 No investigation, hearing, or disciplinary action under this Act precludes the subsequent prosecution of any member for an offence.

Effect of complaint on internal discipline.
37(1) Where a complaint has been filed under this Act, the respondent is not subject to any internal police discipline in respect of the conduct which constitutes the subject matter of the complaint.

Éléments de preuve d'infraction criminelle
35(1) Lorsque, dans le cadre d'une affaire traitée par le commissaire ou le Bureau, des éléments de preuve laissent croire qu'un membre puisse avoir commis une infraction criminelle, le commissaire ou le Bureau doit rapporter l'infraction criminelle soupçonnée au procureur général et lui transmettre toute documentation pertinente, sauf les documents privilégiés, pour les fins d'une inculpation éventuelle.

Effet de la décision d'inculper le membre
35(2) Si le procureur général inculpe le membre d'une infraction criminelle, toute enquête, audience ou mesure disciplinaire découlant de la présente loi, relativement à la conduite du membre qui constitue le chef d'accusation, est arrêtée, à moins que l'instance commencée à l'égard de ce chef d'accusation ne soit suspendue ou qu'aucune décision sur le fond concernant cette instance ne soit rendue.

Présomption d'opposition
35(3) Lorsqu'un membre est inculpé d'une infraction criminelle suite à son témoignage devant le Bureau, ce membre est péremptoirement réputé s'être opposé à répondre à toute question qu'on lui a posée devant le Bureau, pour le motif que sa déclaration ou sa réponse pourrait tendre à l'incriminer ou à établir sa responsabilité dans le cadre d'une poursuite éventuelle par la Couronne ou par quiconque.

Poursuite pour infraction
36 Nulle enquête, audience ou mesure disciplinaire prévue par la présente loi n'exclut la poursuite subséquente de tout membre pour une infraction.

Procédures disciplinaires intérieures
37(1) Lorsqu'une plainte est formulée dans le cadre de la présente loi, le défendeur n'est sujet à aucune procédure disciplinaire intérieure de la part de son service de police relativement à la conduite ayant donné lieu à cette plainte.

Suspension of internal disciplinary proceedings.
37(2) Where internal police disciplinary proceedings have been commenced against a member in respect of conduct which constitutes the subject matter of a complaint under this Act, the internal disciplinary proceedings shall terminate upon the filing of the complaint and the matter shall be resolved solely in accordance with this Act.

Effect of completion of internal proceedings.
37(3) No resolution or termination of internal police disciplinary proceedings against a member precludes the subsequent filing of a complaint under this Act in respect of the conduct which constitutes the subject matter of the internal disciplinary proceedings.

Internal disciplinary proceedings unaffected.
37(4) Notwithstanding anything in this section

(a) where no complaint under this Act has been filed within the time period set out in subsection 6(3); or

(b) where the Commissioner takes no further action on a complaint in accordance with subsection 9(2) or clause 13(1)(b);

this Act does not affect any internal police disciplinary proceedings, including appeals therefrom, brought against a member in respect of the member's conduct toward any person.

Where members of public not involved.
38 This Act does not apply to matters of internal police discipline which do not involve members of the public.

Civil remedies.
39 This Act does not affect any civil remedies available to any person.

Act to prevail over collective agreement.
40 Where there is conflict between this Act or the regulations hereunder and any collective agreement in force in the province, this Act prevails.

Arrêt des procédures
37(2) Lorsque des procédures disciplinaires intérieures ont été intentées contre le membre relativement à la conduite qui donne lieu à une plainte au sens de la présente loi, ces procédures sont arrêtées dès le dépôt de la plainte et l'affaire est réglée conformément à la présente loi seulement.

Droit de porter plainte
37(3) La décision prise suite à des procédures disciplinaires intérieures contre un membre, ou l'arrêt de telles procédures, ne porte pas atteinte au droit de formuler une plainte dans le cadre de la présente loi relativement à la conduite qui a donné lieu à ces procédures.

Procédures disciplinaires intérieures
37(4) Malgré toute autre disposition du présent article lorsque, selon le cas :

a) aucune plainte n'est formulée à l'expiration du délai alloué pour ce faire au paragraphe 6(3);

b) le commissaire décide de classer l'affaire conformément au paragraphe 9(2) ou à l'alinéa 13(1) b),

la présente loi ne porte atteinte ni aux procédures disciplinaires intérieures qui peuvent être intentées contre un membre relativement à sa conduite envers quiconque, ni aux appels y relatifs.

Application de la Loi
38 La présente loi ne s'applique pas aux affaires de discipline intérieure ne concernant que la police et non le public.

Recours civils
39 La présente loi ne porte pas atteinte au droit de toute personne d'exercer tout recours civil qui lui est ouvert.

Conflit avec une convention collective
40 Lorsqu'il y a conflit entre la présente loi ou les règlements y afférents et toute convention collective en vigueur dans la province, la présente loi l'emporte.

Act to prevail over other Acts.
41(1) Where there is conflict between this Act and any other Act of the Legislature, this Act prevails.

Jurisdiction of police commissions.
41(2) Without restricting the generality of subsection (1), where the conduct of a member of a municipal police department is the subject matter of a complaint under this Act, there shall be no inquiry, investigation or hearing by any local police commission or the Manitoba Police Commission in respect of the same conduct except as provided or authorized by this Act.

Meaning of "local police commission".
41(3) For the purposes of this section, " local police commission" means

(a) any police commission established pursuant to the provisions of the charter of any city; or

(b) any police commission established under any other Act of the Legislature; or

(c) any municipal council or any municipal committee, however composed, which is charged with or responsible for the maintenance of a municipal police department.

Failure to comply.
42 Every person who, without lawful excuse,

(a) fails to comply with an order or decision of the Commissioner or the board; or

(b) contravenes section 25;

is guilty of an offence and is liable on summary conviction to a fine of not more than $2,000. and in default thereof to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Witness fees.
43 The fees payable to witnesses at board hearings are the same as the fees payable to witnesses in the Court of Queen's Bench.

Conflit avec d'autres lois
41(1) Lorsqu'il y a conflit entre la présente loi et toute autre loi de la Législature, la présente loi l'emporte.

Compétence des commissions de police
41(2) Sans préjudice de la portée générale du paragraphe (1), lorsque la conduite d'un membre d'un service de police municipal fait l'objet d'une plainte dans le cadre de la présente loi, ni la Commission de police du Manitoba ni une commission de police locale quelconque ne peut tenir d'audience ou d'enquête d'aucune sorte relativement à ladite conduite du membre concerné, sauf si la présente loi le prévoit ou le permet.

Commission de police locale
41(3) Pour l'application du présent article, "commission de police locale" s'entend, selon le cas :

a) d'une commission de police établie en application de la charte d'une cité;

b) d'une commission de police établie en application d'une loi de la Législature;

c) d'un conseil ou d'un comité municipal, peu importe sa composition, chargé de pourvoir au fonctionnement d'un service de police municipal.

Refus de se conformer
42 Commet une infraction et se rend passible, sur déclaration sommaire de culpabilité, d'une amende d'au plus 2 000 $, et à défaut de payer l'amende, d'un emprisonnement d'au plus trois mois, ou de ces deux peines à la fois, quiconque, sans excuse légitime :

a) ne se conforme pas à un ordre ou à une décision du commissaire ou du Bureau;

b) contrevient à l'article 25.

Indemnités des témoins
43 Les indemnités payables aux témoins quant aux audiences tenues par le Bureau sont les mêmes que celles payables aux témoins comparaissant devant la Cour du Banc de la Reine.

Regulations.

44 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations and orders

(a) prescribing the forms in which complaints, notices of alleged disciplinary defaults, and appeals may be made;

(b) prescribing rules of procedure to be followed by the board in conducting any hearing held before it;

(c) respecting such other matters as may be necessary to enable the Commissioner and board to carry out their powers and duties under this Act.

Annual report.

45 The Commissioner shall submit an annual report concerning the performance of his duties and functions to the minister and to each municipality in the province which has established a police department; and the minister shall table the report in the Legislature.

Transitional provision.

46 Where, before the coming into force of this Act, any complaint was made against a member, that complaint may be disposed of in accordance with the law in force at the time the complaint was made.

Règlements

44 Le lieutenant-gouverneur en conseil peut prendre des règlements et des décrets d'application compatibles avec la présente loi et conformes à son esprit; ces règlements et ces décrets ont force de loi. Il peut notamment, par règlement et par décret :

a) établir les formules à utiliser pour formuler une plainte, donner avis des fautes disciplinaires reprochées ou interjeter appel;

b) établir les règles de procédure régissant la tenue des audiences par le Bureau;

c) régir toute autre question, au besoin, de manière à permettre au commissaire et au Bureau d'exercer les pouvoirs et les fonctions que leur attribue la présente loi.

Rapport annuel

45 Le commissaire doit présenter un rapport annuel sur l'exécution de ses fonctions au ministre et à chaque municipalité de la province qui a établi un service de police. Le ministre dépose ce rapport devant la Législature.

Disposition transitoire

46 Une plainte formulée contre un membre avant l'entrée en vigueur de la présente loi peut être traitée conformément à l'état du droit à l'époque où cette plainte a été formulée.

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la Reine du Manitoba

THE LAW ENFORCEMENT REVIEW ACT
(C.C.S.M. c. L75)

Law Enforcement Review Regulation

Regulation 321/87 R
Filed August 31, 1987

1(1) In processing two or more complaints respecting the same incident as it affects the same person, the Commissioner shall deem one person to be the complainant.

1(2) Where an affected person and a third person each submit a complaint respecting the same incident in respect of the affected person, the Commissioner shall deem the affected person to be the complainant irrespective of the sequence in time in which the complaints are received.

2 The complainant and the respondent may, at any stage of the proceedings under the Act, agree to resolve the complaint informally and the Commissioner may thereafter suspend any further action and resolve the complaint in accordance with the agreement.

3 Where conduct leading to a complaint is to be investigated by the internal investigation unit of the respondent's department for the possible laying of criminal charges against the respondent, the Chief of Police of the department shall inform the Commissioner of this intention.

4 Witnesses attending at formal hearings of the Commissioner to give testimony under oath are entitled to receive the same fees as are payable to witnesses in the Court of Queen's Bench.

5 The notice of an alleged disciplinary default required to be served on the respondent under subsection 17(2) of the Act shall be in the form set out in the Schedule.

LOI SUR LES ENQUÊTES RELATIVES À L'APPLICATION DE LA LOI
(C.P.L.M., c. L75)

Règlement visant les enquêtes relatives à l'application de la loi

Règlement 321/87 R
Date de dépôt : le 31 août 1987

1(1) Si, pour un même incident portant préjudice à une même personne, deux plaintes ou plus sont déposées, le commissaire considère comme plaignant, aux fins de l'étude de ces plaintes, l'une des personnes ayant déposé une plainte.

1(2) Si la personne ayant subi le préjudice et un tiers soumettent chacun une plainte concernant le même incident, la personne ayant subi le préjudice est réputée être la plaignante, peu importe l'ordre dans lequel les plaintes ont été reçues.

2 À toute étape des procédures intentées en vertu de la Loi, le plaignant et le défendeur peuvent s'entendre pour régler l'affaire sans formalités. Par la suite, le commissaire peut suspendre toute action ultérieure et régler la plainte conformément aux termes de l'entente.

3 Lorsque la conduite ayant suscité la plainte doit faire l'objet d'une enquête de la part de la section d'enquête interne du service auquel appartient le défendeur, afin de déterminer si celui-ci sera inculpé d'infractions criminelles, le chef de police du service en informe le commissaire.

4 Les témoins présents à des audiences formelles tenues par le commissaire afin d'y déposer sous serment ont droit aux mêmes indemnités que s'ils témoignaient devant la Cour du Banc de la Reine.

5 L'avis de la faute disciplinaire reprochée qui doit être signifié au défendeur en application du paragraphe 17(2) de la Loi est présenté suivant la formule prévue à l'annexe.

SCHEDULE

NOTICE OF ALLEGED DISCIPLINARY DEFAULT AND
REFERRAL TO THE LAW ENFORCEMENT REVIEW BOARD UNDER
THE LAW ENFORCEMENT REVIEW ACT

Date of Complaint:

File No.:

Complainant:

Respondent Officer:
(Include Rank, No. and Police Department)

TAKE NOTICE that the Law Enforcement Review Commissioner hereby refers the above matter to the Law Enforcement Review Board for a hearing to determine the merits of the complaint which alleges the commission of certain disciplinary defaults, as defined under Section 29 of The Law Enforcement Review Act, by the above named respondent officer, namely that the respondent officer did:

1.

2.

3.

DATED at this day of , 19 .

L.E.R.A. Commissioner

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ANNEXE

AVIS DE FAUTE DISCIPLINAIRE REPROCHÉE ET RENVOI AU BUREAU D'ENQUÊTE SUR L'APPLICATION DE LA LOI

LOI SUR LES ENQUÊTES RELATIVES À L'APPLICATION DE LA LOI

Date de la plainte :

N° de dossier :

Plaignant :

Policier défendeur :

(Inscrire le rang, le matricule et le service de police)

SACHEZ que le Commissaire aux enquêtes relatives à l'application de la loi défère la plainte précitée au Bureau d'enquête sur l'application de la loi pour qu'il tienne audience et statue sur le bien-fondé des allégations qu'elle contient concernant certaines fautes disciplinaires, définies à l'article 29 de la Loi sur les enquêtes relatives à l'application de la loi, qui auraient été commises par le policier défendeur susmentionné, savoir, qu'il ou elle :

1.

2.

3.

FAIT à , le 19 .

Commissaire, L.E.A.L.

L'Imprimeur de la Reine du Manitoba